



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

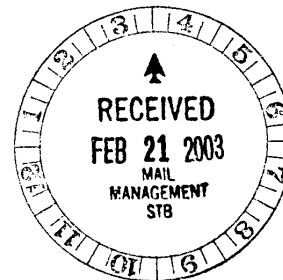
400 Seventh St., S.W.
Washington, D.C. 20590

207 277

February 21, 2003

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Ex Parte No. 638



Dear Secretary Williams:

Pursuant to the Notice served February 6, enclosed herewith please find the original and ten copies of the Statement of the United States Department of Transportation in the above-referenced proceeding. The undersigned will appear on behalf of the Department to deliver this written testimony.

Sincerely,

Paul Samuel Smith
Senior Trial Attorney
U.S. Department of Transportation
Room 4102 C-30
400 Seventh Street, S.W.
Washington, D.C. 20590
(202) 366-9280

ENTERED
Office of Proceedings

FEB 21 2003

Part of
Public Record

Enclosures

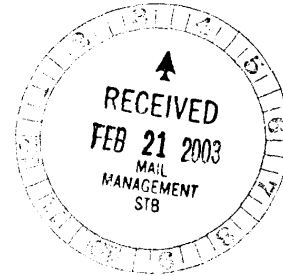
1
Office Proceedings

FEB 21 2003

Part of
Public Record

207277

Before the
Surface Transportation Board
Washington, D.C.



_____)
Procedures to Expedite Resolution)
Of Rail Rate Challenges to be Considered)
Under the Stand-Alone Cost Methodology)
_____)

Ex Parte No. 638

Statement of the
United States Department of Transportation

For years the Surface Transportation Board, and before it the Interstate Commerce Commission, have struggled to refine the process by which the reasonableness of rail rates is ascertained. This proceeding focuses on two broad elements of that continuing effort: mediation and discovery matters. The United States Department of Transportation supports the basic proposals put forward in both of these areas.

Mediation has been widely embraced in this proceeding. Parties have suggested various changes to address legal questions arising from statutory timeframes and to meet various practical concerns. DOT favors mediation because, in common with alternative dispute resolution options generally, it offers the promise of efficiency and flexibility that are largely foreign to formal adjudication. Appropriately adjusted mediation rules can preserve these benefits in a manner consistent with existing statutory time frames. The Department believes that any rules ultimately adopted by the Board must be tailored both to preserve the confidentiality of the mediation process and to provide an expeditious time frame, so that even where mediation is unsuccessful resort to that process will not

impede the ultimate resolution of a rate dispute. We urge that the Board adopt rules that reflect these concerns.

The Board's discovery-related proposals have attracted more controversy. Discovery disputes have been a prime contributor to extended delay in major rail rate cases, making the task of determining reasonableness more arduous and rendering that process less accessible overall. The Department strongly supports the measures proposed here because we think that together they will reduce the opportunity for parties to abuse the discovery process.

A higher standard for discovery would dispense with less well-justified requests. Parties that truly need to obtain specific information from each other should be able to demonstrate that fact and so meet the higher standard. An accelerated procedural schedule for resolving more weighty discovery disputes is essential, and requires an unwavering commitment from the Board. DOT believes that informal conferences between STB staff and the parties in a rate case can be just as helpful in narrowing issues and injecting a note of realism as they are in judicial litigation.

In closing, it is appropriate to recall the oft-repeated but timeless observation that "Justice delayed is justice denied." Something very similar can be said about the effects of lengthy delay in the pursuit of a determination of the reasonableness of railroad rates.